

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17696 of 2015

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Rahish Kumar son of Shri Krishnandan Prasad, Resident of Village- Balaitha,
P.S. Masaurhi, District- Patna.

... .. Petitioner/s

Versus

1. The Union Of India through the Secretary, Home Affairs, Government of India, New Delhi.
2. The Director General of Police, Central Reserved Police Force, New Delhi.
3. The Inspector General of Police, Nanipur and Nagaland Sector, C.R.P.F., Imphal (Manipur).
4. The Deputy Inspector General of Police, Group Kendra, Imphal Range, CRPF, Imphal (Manipur).
5. The Commandant-87 Battalion, Central Reserve Police Force, S.T.C. Campus, Upathal, Giriban, Manipur
6. The Commandant-69, Battalion, Central Reserve Police Force, Mantripukhri, Imphal (Manipur).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bhola Kumar
Mr. Akshansh Ankit, Advocates
For the Union of India : Dr. Krishna Nandan Singh, Sr. Advocate (ASGI)
Mr. Ram Anurag Singh, C.G.C.
Mr. Shivaditya Dhari Sinha, AC to ASGI

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 06-05-2024

Heard Mr. Bhola Kumar, learned counsel appearing on behalf of the petitioner and Dr. K.N. Singh, learned ASGI assisted by Mr. Ram Anurag Singh, learned Central Government Counsel for the Union of India.

2. The present writ petition has been filed for the following reliefs :

“A. For issuance of a writ in the nature of Certiorari quashing the order/Notice dated 31.07.2015 contained



in Letter No. C.VI-1/2015-69-EC-1 (Annexure-9) passed by the Commandant-69, B N , C R P F, Mantripukhri, Imphal (Manipur) whereby and whereunder the petitioner has been terminated from his service with effect from 01.09.2015.

B. For directing the respondents concerned to reinstate the service of the petitioner with full consequential benefit.

C. For passing any other order/s, Command/s or appropriate writ/s which your Lordships deem fit and proper in the facts and circumstances of the instant Case.

3. Learned counsel for the petitioner submits that the petitioner was appointed as Constable Water Career in Central Reserved Police Force (hereinafter referred to as "C.R.P.F") in terms of appointment letter dated 15.04.2011 and he had submitted his joining on 14.05.2011 and the same was accepted. Learned counsel for the petitioner submits that while the petitioner was serving in the office of the Commandant 87, Battalian and due to some family reason he had applied for casual leave for the period from 27.08.2011 to 16.09.2011 and the same was sanctioned. Although the petitioner had joined in the night of 16.09.2011 but he failed to report his joining. The leave of the petitioner has been declared unauthorized by the order dated 09.01.2012 and the petitioner was declared absconder by the order dated 13.02.2012.



Learned counsel for the petitioner submits that the enquiry report was ex-parte and without hearing the petitioner the enquiry had been conducted and submitted his report on 15.06.2012. On the basis of the ex-parte enquiry, the petitioner was removed from service by the Commandant 87, Battalion under Section 11(1) of the C.R.P.F. Act, 1949 read with Rule 27 of the C.R.P.F. Rule 1955. Learned counsel for the petitioner submits that the Commandant had no jurisdiction under Section 11(1) of the C.R.P.F. Act to remove the service of the petitioner. He has only empowers to impose minor punishment and the termination/removal from service is not permitted under Section 11(1) of the Act. The Rule 27(C) of the Rules does not permit an ex-parte punishment as it is mandatory on the part of the disciplinary authority to read out the charge to the delinquent but in the instant case no such procedure had been followed and the impugned order has been served to the petitioner through the registered post. Learned counsel for the petitioner further submits that the petitioner had submitted his joining on 04.01.2013 in person but the same was not accepted and the petitioner and the petitioner has filed representation through post before the respondent no. 3 and the petitioner was not allowed to join his duty then the petitioner has filed C.W.J.C. No. 5651 of 2013 for



quashing the order dated 10.09.2012 passed by the Respondent no. 5 and the same was disposed of vide order dated 08.04.2013 with liberty to file an appeal and revision before the appropriate authority. Learned counsel for the petitioner submits that in compliance of the order dated 08.04.2013, the petitioner had filed an appeal before the Respondent No. 4 but the same was dismissed on 14.05.2013. Thereafter, the petitioner had filed a revision application before the Respondent No. 3 and the same was allowed by order dated 03.10.2013 and the petitioner was directed to report to the Respondent No. 6 within a month from the date of issue of the order.

4. Learned counsel for the petitioner submits that in compliance of the order dated 03.10.2013 of respondent no. 3, the petitioner had joined his duty on 26.10.2013 before the Respondent No. 6 and all of a sudden the petitioner has received a notice of termination of service issued under Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965 by the Respondent No. 6 on 01.08.2015 stating therein that the services shall stand terminated with effect from the date of expiry for a period of one month i.e. on 01.09.2015, no reason was mentioned in the said notice why the service of the petitioner shall stand terminated. The service of the petitioner was terminated on



11.09.2015 after five years of service without any departmental proceeding. Learned counsel for the petitioner submits that it appears that the petitioner was initially removed from service under Section 11(1) of C.R.P.F. Act, 1949 read with Rule 27 of the C.R.P.F. Rule, 1955 which suggests that the service of the petitioner was confirmed and thereafter the present impugned order has been passed under Sub-Rule 1 of Rule-5 of the Central Civil Services (Temporary Services) Rules, 1965 which suggests that the service of the petitioner was not confirmed and from perusal of the aforesaid order, it appears that the respondents had treated the service of the petitioner was temporarily and in fact the previous litigation, the authority has found that the service of the petitioner was confirmed. In view of the aforesaid, the proceeding was initiated under Rule-5 (1) of the Central Civil Services (Temporary Services) Rules, 1965 is bad and respondents without verifying the previous action which was taken under Section 11(1) of the C.R.P.F. Act, 1949 read with Rule 27 of the C.R.P.F. Rule 1955.

5. Learned ASGI appearing on behalf of the Union of India submits that it appears that the past service record of the petitioner was not satisfactorily and petitioner one reason to another reason was absent from the duty and after considering the gravity of the action of the petitioner, the respondents had passed



the impugned order in accordance with law. Further submits that the petitioner may avail the remedy under Rule 5(2)(a) of Central Civil Services (Temporary Services) Rules, 1965 which reads as follows:-

“(2)(a) Where a notice is given by the appointing authority terminating the services of a temporary Government Servant, or where the service of any such Government Servant is terminated either on the expiry of the period of such notice or forthwith by payment of pay plus allowances, the Central Government or any other authority specified by the Central Government in this behalf may, of its own motion or otherwise, re-open the case, and after calling for the records of the case and after making such enquiry it deems fit-

- (i) confirm the action taken by the appointing authority;*
- (ii) withdraw the notice;*
- (iii) reinstate the Government Servant in service; or*
- (iv) make such other order in the case as it may consider proper:*

Provided that except in special circumstances, which should be recorded in writing, no case shall be reopened under this sub-rule after the expiry of three months:

- (i) from the date of notice, in a case where notice is given;*
- (ii) from the date of termination of service, in a case where no notice is given.*

(b) Where a Government Servant is reinstated in service under sub-rule (2) the order of reinstatement shall specify:

- (i) the amount of proportion of pay and allowances, if*



any, to be paid to the Government Servant for the period of his absence between the date of termination of his services and the date of his reinstatement; and (ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes”.

6. In view of the aforesaid, the petitioner is directed to avail the remedy under Rule 5(2)(a) of Central Civil Services (Temporary Services) Rules, 1965 and respondents are directed to take a decision on the application of the petitioner under Rule 5(2) (a) of Central Civil Services (Temporary Services) Rules, 1965 within a period of three months in accordance with law.

7. The writ petition stands disposed of with the aforesaid observations and directions.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
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